

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
KNOXVILLE DIVISION**

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	:	
LEWIS COSBY, KENNETH R. MARTIN, as	:	No. 3:16-cv-00121-TAV-DCP
beneficiary of the Kenneth Ray Martin Roth IRA,	:	
and MARTIN WEAKLEY on behalf of themselves	:	
and all others similarly situated,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
KPMG LLP,	:	
	:	
Defendant.	:	

**DEFENDANT KPMG LLP'S MOTION TO STAY PROCEEDINGS  
PENDING APPEAL**

Pursuant to Rule 23(f) of the Federal Rules of Civil Procedure, Defendant KPMG LLP (“KPMG”) respectfully moves the Court to stay proceedings pending resolution of its Rule 23(f) petition for permission to appeal to the United States Court of Appeals for the Sixth Circuit.

On May 7, 2021, the Court entered an order certifying the respective classes on Plaintiffs’ claims under the Sections 10(b) and 11 classes (the “Order”). (ECF No. 211.) The Order raises three related issues of significant practical importance to class certifications in securities cases arising under Section 10(b) of the Securities Exchange Act of 1934 and Section 11 of the Securities Act of 1933, which have produced widespread disagreement among district courts. Accordingly, on May 21, 2021 KPMG filed a Rule 23(f) petition for permission to appeal the Court’s Order Granting Class Certification to the Sixth Circuit (the “Petition”). The Petition is currently pending before the Sixth Circuit and that Court’s decision will have a potentially dispositive impact on this case.

In determining whether a stay is appropriate, the Court should consider: (1) the likelihood that KPMG will prevail on the merits of the appeal; (2) the likelihood that KPMG will be irreparably harmed absent a stay; (3) the prospect that Plaintiffs will be harmed by a stay; and (4) the public interest in granting a stay. *See Grutter v. Bollinger*, 247 F.3d 631, 632 (6th Cir. 2001) (internal citation omitted). Here, all four factors weigh in favor of a stay. First, KPMG has shown a likelihood of success on the merits. The Order certifying the Section 10(b) class implicates two unsettled issues of law in the Sixth Circuit: (1) whether a defendant can rebut the *Basic* presumption of reliance with evidence that the alleged misrepresentation did not result in a price increase; and (2) whether the *Affiliated Ute* presumption of reliance applies in a case primarily concerning misstatements. In addition, the Order certifying the Section 11 class held that the

class representative did not need to demonstrate standing to bring the class's claim at the class certification stage. However, other courts have squarely rejected that view.

Second, KPMG will be irreparably harmed if the stay is not granted; whereas the issuance of a stay pending resolution of the Petition will not prejudice Plaintiffs. Finally, public interest will be advanced by the issuance of a stay – proceeding without clarification from the Sixth Circuit on these important and unsettled legal issues would be a waste of judicial and party resources.

For the reasons stated herein and in the accompanying memorandum of law, KPMG respectfully requests that this Court enter an Order staying the proceedings in this case pending resolution of its Rule 23(f) petition currently pending in the Sixth Circuit.

Dated: May 21, 2021

Respectfully submitted,

/s/ Gregory G. Ballard  
MCDERMOTT WILL & EMERY LLP  
Gregory G. Ballard (admitted *pro hac vice*)  
Ludwig von Rigal (admitted *pro hac vice*)  
340 Madison Avenue  
New York, New York 10173  
Telephone: 212-547-5330  
Email: gballard@mwe.com  
Email: lvonrigal@mwe.com

Allyson E. Riemma (admitted *pro hac vice*)  
444 West Lake Street  
Chicago, IL 60606  
Telephone: 312-372-2000  
Email: ariemma@mwe.com

WALLER LANSDEN DORTCH & DAVIS, LLP  
Paul S. Davidson (TN BPR # 011789)  
511 Union Street, Suite 2700  
Nashville, TN 37219  
Telephone: 615-244-6380  
Email: paul.davidson@wallerlaw.com

LEWIS ROCA ROTHGERBER CHRISTIE LLP

Gary F. Bendinger (admitted *pro hac vice*)

201 East Washington Street, Suite 1200

Phoenix, AZ 85004

Telephone: 602-262-5353

Email: [gbendinger@lrrc.com](mailto:gbendinger@lrrc.com)

*Counsel for Defendant KPMG LLP*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing has been served to the following individuals via the CM/ECF system and e-mail this 21st day of May, 2021:

Gordon Ball  
W. Gordon Ball, Attorney At Law  
7001 Old Kent Drive  
Knoxville, TN 37919  
gball@gordonball.com

Steven J. Toll  
Cohen, Milstein, Sellers Toll PLLC  
1100 New York Avenue NW  
Fifth Floor  
Washington, DC 20005-3934  
stoll@cohenmilstein.com

Laura H. Posner  
88 Pine Street, 14<sup>th</sup> Floor  
New York, NY 10005  
lposner@cohenmilstein.com

/s/ Gregory G. Ballard  
Gregory Ballard